

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00

CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-10

PA-03 RSC-01 PRS-01 SPC-03 SS-15 ACDA-19 IO-13 CAB-09

COME-00 EB-11 FAA-00 DOTE-00 SY-10 USSS-00 AF-10

ARA-16 EA-11 NEA-10 DRC-01 /192 W

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O R 141210Z SEP 73

FM AMEMBASSY ROME

TO SECSTATE WASHDC NIACT IMMEDIATE 757

INFO AMEMBASSY PARIS

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMCONSUL MONTREAL

USUN NEW YORK 1703

C O N F I D E N T I A L ROME 9615

E.O. 11652: GDS

TAGS: ICAO ETRN

SUBJECT: ICAO AIR SECURITY CONFERENCE: REQUEST FOR GUIDANCE

ON PROPOSALS TO AMEND ARTICLE 87

MONTREAL FOR US REP ICAO

PLS PASS TO: LITTELL/CAB; DRISCOLL/DOT; STEWART/FAA

1. THOUGH USDEL NOT INSTRUCTED SUPPORT AMENDMENT TO CHICAGO
CONVENTION WITHOUT ADOPTION OF ACCEPTABLE INDEPENDENT CONVENTION,
USDEL VOTED SEPT. 7 (ROME 9350) IN FAVOR OF QUESTION OF PRINCIPLE
THAT AN AMENDMENT SHOULD PROVIDE FOR THE DENIAL OF AIR SPACE.
ASSEMBLY MORNING SEPT 15 WILL CONSIDER THREE COMPETING DRAFTS
BASED ON THAT QUESTION OF PRINCIPLE. THESE DRAFTS HAVE BEEN SENT
SEPTEL. CHAIRMAN HAS RULED THESE PROPOSALS WILL BE VOTED ON AS
ALTERNATIVES IN THE FOLLOWING ORDER: (A) UK/SWISS (B) QATAR
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(C) SUDAN.

2. THE NEW UK/SWISS DRAFT IS IN SOME RESPECTS WEAKER THAN ORIGINAL UK/SWISS PROPOSAL TO AMEND ARTICLE 87 BUT USDEL FEELS REDRAFT TECHNICALLY MORE CORRECT. USDEL STILL OF OPINION THAT ANY EFFECTIVE AMENDMENT UNLIKELY TO RECEIVE FINAL APPROVAL. USDEL CONCERNS REGARDING THIS PROPOSAL ARE AS FOLLOWS: (A) SUBPARA (A) WOULD APPARENTLY REQUIRE TWO DECISIONS BY COUNCIL EITHER OR BOTH OF WHICH MIGHT BE APPEALED TO THE ICJ. USDEL NOW REGARDS AMENDMENT OF ARTICLE 86 UNLIKELY; ACCORDINGLY ANY DEFINITIVE DECISION BY THE COUNCIL UNDER NEW UK/SWISS PROPOSAL COULD BE GREATLY DELAYED. (B) UK AS NOTED IN FOOTNOTE 10 TO NEW PROPOSAL (SENT SEPT 15) PREVENTED SUSPENSION OF VOTE OF CONTRACTING STATE THAT FAILS TO DENY USE OF AIRSPACE PURSUANT TO SUBPARA (A). THUS, COUNCIL WOULD HAVE NO MECHANISM TO ENFORCE DECISION. IN USDEL VIEW, STATE WHICH FAILS TO DENY AIRSPACE COULD NOT THEREBY BECOME TARGET OF SIMILAR SANCTION.

3. AMONG THREE PROPOSALS USDEL FAVORS UK/SWISS BECAUSE IT KEEPS DECISION AND ACTION PHASES BOTH WITHIN THE ICAO COUNCIL. IF THE UK/SWISS PROPOSAL FAILS THEN THE OTHER PROPOSALS WILL BE PUT TO THE VOTE ACCORDING TO THE ORDER DECIDED BY THE CHAIRMAN.

4. ABSENT CONTRARY INSTRUCTIONS USDEL WILL OFFER FOLLOWING COMMENTS IN ASSEMBLY SEPT 15 ON QATAR PROPOSAL:

(A) THE INTRODUCTION OF THE ASSEMBLY INTO THE DECISION PROCESS UNNECESSARILY DELAYS IMPLEMENTATION OF ANY PENALTY.

(B) WITH RESPECT TO SUBPARA (B) IT IS IMPRACTICAL FOR THE ASSEMBLY, UNLESS IN PERPETUATED SESSION, TO ASSUME THIS TASK.

(C) NOTWITHSTANDING THE PROVISION IN SUBPARA (G) IT IS UNCLEAR AS TO WHETHER THERE COULD ALSO BE AN APPEAL TO THE ICJ FROM THE COUNCIL RECOMMENDATION IN SUBPARA (A).

(D) IN SUBPARA (F) THE RIGHT IS GIVEN TO ANY CONTRACTING STATE TO APPEAL A DECISION. THIS RIGHT OF APPEAL SHOULD BE LIMITED TO THE STATE AGAINST WHICH THE ACTION IS TAKEN OTHERWISE A GREAT MANY SLIGHTLY DIFFERENT APPEALS COULD BE LODGED WITH THE CONFIDENTIAL

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ICJ FOR DECISION.

5. ABSENT CONTRARY INSTRUCTIONS, USDEL WILL ALSO MAKE THESE ADDITIONAL COMMENTS IN SEPT 15 ASSEMBLY WITH RESPECT TO PROPOSAL OF SUDAN: (A) THE SUDANESE PROPOSAL GIVES TO THE ASSEMBLY THE PRESENT FUNCTION OF THE ICAO COUNCIL TO DECIDE WHETHER A STATE IS ACTING IN CONFORMITY WITH CHICAGO. SINCE USDEL FEELS THIS IS A RETROGRADE STEP WE WILL OPPOSE IT STRONGLY. (B) THE SUDANESE

PROPOSAL ALSO WEAKENS THE ONLY EXISTING SANCTION IN CHICAGO BY REQUIRING THE ASSEMBLY TO GET A TWO-THIRDS MAJORITY TO SUSPEND THE VOTE UNDER ART. 88.

6. ON THE BASIS OF THE ABOVE, USDEL ABSENT CONTRARY INSTRUCTIONS INTENDS PROCEED AS FOLLOWS: (A) WITH RESPECT TO THE UK/SWISS PROPOSAL TO VOTE YES, EXPLAINING THAT WE SUPPORT THIS WHEN TAKEN IN CONJUNCTION WITH ART. 86. IF ART. 86 IS VOTED ON FIRST AND FAILS, USDEL WOULD ABSTAIN ON UK/SWISS PROPOSAL. (B) WITH RESPECT TO QATAR PROPOSAL, USDEL WOULD EXPECT TO ABSTAIN ON QATAR PROPOSAL. HOWEVER, SHOULD IT APPEAR THAT IF QATAR PROPOSAL FAILS, SUDANESE PROPOSAL WILL SUCCEED, USDEL MAY ENCOURAGE PRIVATELY SOME DELS TO SUPPORT QATAR WHILE EXPLAINING PRIVATELY THE NECESSITY FOR AN ABSTENTION BY THE US. (C) WITH RESPECT TO SUDANESE PROPOSAL, WILL VOTE NO AND ALSO ACTIVELY OPPOSE.

7. USDEL ADVISES BERK (ALPA), SPEAKING ALSO FOR USDEL ADVISER LANDRY (ATA) FEELS THAT, IF ACCEPTABLE, INDEPENDENT CONVENTION ELIMINATED BY VOTES ON PRINCIPLE SEPT. 14 USDEL SHOULD SUPPORT NOTHING. IF ACCEPTABLE INDEPENDENT CONVENTION STILL ALIVE, BERK DOES NOT OBJECT TO PARA 6 ABOVE. VOLPE

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